



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851



CONFLICT OF INTEREST OPINION EC-COI-06-01

INTRODUCTION

The Department of Social Services (DSS) is the state agency responsible for protecting children in the Commonwealth. Its responsibilities include providing substitute care for children who are unable to remain in their homes. DSS fulfills this responsibility by recruiting, evaluating and training private individuals to become foster parents. If a child is unable to return home, DSS is then responsible for finding permanent families for children in its custody through adoption, guardianship or direct custody through the court. Individuals who serve as foster/pre-adoptive parents, adoptive parents and guardians receive various payments from DSS.

QUESTIONS

1. Does the conflict of interest law, G.L. c. 268A, allow DSS employees to serve as foster/pre-adoptive parents, adoptive parents or guardians for a child in the care or custody of DSS and receive from DSS, the corresponding payments applicable to those programs?

2. May other state employees serve as foster/pre-adoptive parents, adoptive parents or guardians for a child in the care or custody of DSS and receive from DSS, the corresponding payments applicable to those programs?

ANSWERS

In order to serve as a foster/pre-adoptive parent, adoptive parent or guardian and receive the corresponding payments for those programs, a state employee will need to qualify for an exemption under § 7 of G.L. c. 268A.

1. Full-time DSS employees and part-time DSS employees who are not special state employees, do not qualify for any exemption under § 7. Thus, in order for these employees to participate in the DSS programs the creation of an additional exemption in § 7 is necessary. All special state employees employed by DSS may use the § 7(e) exemption.

2. All other full-time and part-time state employees who are not special state employees, are generally eligible for the § 7(b) exemption. However, under § 7(b), those state employees may receive compensation from DSS, other than reimbursement, for not more than 500 hours during a calendar year. Compensation for more than 500 hours will require the creation of an additional exemption in § 7. Special state employees not employed by DSS may use the § 7(d) exemption.

FACTS^{1/}

DSS was created by the Legislature in 1978 as the Commonwealth's child protective state agency. Its mandate includes protecting children from abuse or neglect, providing social services to families and their children and providing substitute care for children who are unable

to remain safely in their home. On a daily basis, there are approximately 10,000 children in DSS custody who must be placed out of their homes. Most of these children are placed in foster homes.

Most foster care situations are temporary and children eventually return home. However, when a child is unable to return home, DSS is responsible for finding a family with which the child can live permanently through adoption, guardianship or custody to a relative. When DSS is unable to return the child home or to find a permanent family, it tries to find an adult who will make a lifelong connection with the child while DSS assists the child in obtaining independent living skills and supports the child in furthering his education and/or obtaining employment.

Encouraging individuals to become foster or adoptive families is a critical priority of DSS.^{2/} It licenses and approves various foster/pre-adoptive parents and homes in accordance with its written guidelines and standards.^{3/} All foster homes are reevaluated annually. DSS also has a mandatory training program for any individual who wants to serve as a foster/pre-adoptive parent^{4/} in addition to providing continuing training opportunities.

A. DSS Foster Care and Other Programs

Foster parents are responsible for the day-to-day care of the child. They provide the child with a place to live, food and clothing as well as paying for other expenses related to raising the child. DSS, as the child's custodian, delegates most routine decisions to foster parents, but retains decision-making authority on non-routine matters.

DSS is also responsible for finding families who will adopt children in its custody who cannot return home. Many foster parents agree to become the child's adoptive parents. However, when a child's current foster home does not wish to adopt the child, DSS will recruit, evaluate and train adoptive families for the child in a process similar to the one used to recruit foster families.

When a child cannot return home and DSS is unable to find an adoptive home, a guardianship is considered. This usually occurs with children who are older (over the age of 12). In most guardianship situations, the foster parent the child has been living with will become the child's guardian.

B. The Foster Parent and Child Specific Agreements with DSS

Once a foster/pre-adoptive applicant has been approved or licensed by DSS and has completed pre-service foster parent training, DSS and the foster/pre-adoptive parent are required to enter into a written agreement.^{5/} The written agreement, entitled "An Agreement Between the Massachusetts Department of Social Services and Foster/Adoptive Parents" (Foster Parent Agreement), must be signed by each foster/adoptive parent and an authorized agent of DSS.^{6/} By its terms, it remains in effect through a person's career as a foster/adoptive parent unless terminated by either party. It further provides that it will be reviewed and updated as part of the foster/adoptive family re-evaluation process.

The Foster Parent Agreement informs foster/adoptive families of their responsibilities. In particular, it sets forth thirty-one (31) separate provisions that the foster/adoptive parent agrees to perform. With his signature, the foster/adoptive parent certifies that he understands the

statement of his responsibilities set forth therein and agrees to the terms listed therein. These provisions include the foster/adoptive parent's agreement to undertake various responsibilities in the following areas: promoting the child's well-being and meeting the child's individual needs, including medical and dental needs (§§ 1-2; 9-12); supporting the reunification of the child with his family and supporting family visits as recommended (§§ 3-4); working with DSS, including the DSS social worker assigned to the family, and participating in various conferences (§§ 6, 8); notifying and informing DSS of various matters (§§ 16-18; 20-22; 25-26); complying with DSS regulations and policies, including notifying it of any overpayments made on the child's behalf by DSS (§§ 27, 31); and maintaining insurance to cover damage to or loss of the foster/adoptive family's property caused by a child in DSS care or custody (§ 29).

The Foster Parent Agreement also sets forth twenty (20) separate provisions that DSS agrees to perform. These provisions include certain responsibilities in the following areas: providing families with sufficient information regarding the child prior to placement, so that she or he knowledgeably can determine whether to accept the child and to provide ongoing information (§ 1); providing relevant training programs, social workers, family resource workers and other assistance (§§ 3-5, 20); providing a Medical Passport for the child's medical and dental expenses (§ 8); delegating certain rights regarding care and school-related activities (§§ 9-11); providing information regarding the procedure for review of DSS decisions (§ 14); informing the foster/adoptive family of the range and frequency of payments he will receive for the care of a child in DSS care or custody (§ 7); and providing limited amounts of reimbursement, secondary to other primary insurance for reimbursement on account of theft of or damage to the foster/adoptive family's property that is the result of deliberate, malicious action by a child in DSS care or custody (§ 15).

When a child is actually placed in the foster home with a foster or adoptive parent, another document is signed entitled a "Child Placement Agreement" which provides specific information about the child as well as the specific reimbursement rate. The Child Placement Agreement is a three-part document. The first part is used to provide information to the family with whom the child is placed and/or to assist a family resource social worker in identifying a family for a specific child. The second part is used as the agreement between the family and DSS to document roles and responsibilities involving the placement of a specific child with the family. The third and final part is used to document that the Child Placement Agreement has been reviewed and updated no less than once every six months.

C. Payments from DSS

When a child is placed in a foster/pre-adoptive home, DSS is required among other things, to provide the foster/pre-adoptive parent with any subsidy or benefits to which they are entitled under DSS regulations, standards or policies.^{7/} Foster/pre-adoptive parents receive a daily rate based on the age of a child. They may also receive quarterly clothing allowances, holiday and birthday supplements and are eligible for reimbursement for certain additional out-of-pocket expenses and compensation for providing specific services to a child with special needs.^{8/}

Basic Daily Rate

Foster/pre-adoptive parents receive reimbursement for providing foster care at rates established by DSS. All such parents receive a basic daily rate for each child in the home

based on the age of the child to cover the child's living expenses.^{9/} Current daily rates range from \$17.10 for the youngest children to \$18.59 for the older children. DSS may also provide foster/pre-adoptive parents with quarterly clothing allowances for foster children in their care^{10/} in addition to other supplements for birthdays (\$50) and holidays (\$100).^{11/}

In addition to the daily rate, DSS has a system of reimbursement for exceptional expenses that foster/pre-adoptive families may incur as well as hourly compensation for specialized services they may provide known as Supplemental Reimbursement.^{12/} Supplemental Reimbursement consists of two distinct programs and methods of payment.

Supplemental Reimbursement

1. Receiptable Reimbursement Program

The first type of program is the Receiptable Reimbursement Program. The Receiptable Reimbursement Program is a receipt-based system which compensates foster/pre-adoptive families for exceptional and essential out-of-pocket costs they incur in the process of meeting a child's identified needs related to the child's service plan goal. The foster/pre-adoptive family is reimbursed in accordance with the program's guidelines and restrictions. Only those items which can be documented with a receipt are eligible for reimbursement.

Types of allowable expenses under the Receiptable Reimbursement Program include: medication, medical supplies and equipment not covered by MassHealth; non-MassHealth reimbursed therapy; child-specific activities/events designed to address identified needs and defined goals in the child's service plan; and child care for special needs children. Non-allowable expenses include: driver education; respite care services; and items/expenses which may be purchased or reimbursed through other state/community agencies. In order to obtain such reimbursement, a parent must submit a Supplemental Reimbursement Request/Agreement with the appropriate documentation. The ability to obtain Receiptable Reimbursement is contingent on the availability of funds within the DSS Area Office's spending limits.

2. P.A.C.T. Program

The second type of program is the Parents and Children Together (P.A.C.T.) Program. The P.A.C.T. Program compensates foster/pre-adoptive families who provide planned, specialized services designed to address identified needs related to achievement of a child's service plan goal. Parents are compensated at the standard hourly rate of \$7.50 for a specified number of hours per week. P.A.C.T. services include providing physical therapy to a child, speech/communication exercises or caring for a child on an apnea monitor. The number of service hours is determined by the child's P.A.C.T. team. A parent must submit a Supplemental Reimbursement Request/Agreement which must be approved by the DSS Area Director. When the number of hours exceeds certain maximum levels specified for the child and for the home, the DSS Regional Director must also approve the request. A foster/pre-adoptive family must document the P.A.C.T. services. The ability to obtain P.A.C.T. payments is contingent on the availability of funds within the DSS Area Office's spending limits.

Adoption Subsidy

DSS operates two adoption subsidy programs to support the adoption of children with special needs: a federally supported program governed by the provisions of Title IV-E of the

Social Security Act; and a state-funded program created pursuant to G.L. c. 18B, § 21.^{13/} In both programs, the adoption subsidy consists of financial assistance and/or medical assistance through the state's Division of Medical Assistance and is provided on behalf of a child with special needs after the child has been adopted.^{14/} Financial assistance is intended to aid in the support of a child with special needs and is paid directly to the adoptive parent.^{15/} Medical assistance is intended to supplement family health insurance for a child with special needs and is paid directly to the vendor according to the rates set forth in the current Division of Medical Assistance fee schedule.^{16/} The adoption subsidy ends when the child turns 18. In exceptional circumstances, it may continue until the child is 21 or 22.

The adoptive parent enters into a written agreement with DSS entitled "Adoption Subsidy Agreement." The Adoption Subsidy Agreement confirms the child's eligibility for a Title IV-E or state adoption subsidy and is effective as of the date accepted by both parties as evidenced by their signatures. Benefits to be provided begin as of the date of the adoption unless DSS determines an earlier start date is in the best interests of the child.^{17/} The Adoption Subsidy Agreement specifies the financial assistance and/or medical assistance the adoptive parents will receive on behalf of the adopted child.

DSS regulations provide that, if requested, it will make a one-time payment to the pre-adoptive parent(s) of a child with special needs as defined in 110 CMR 7.209(2) to reimburse the family for expenses directly related to the child's adoption, provided that the child is adopted through a placement made by DSS or its contracted agency or a licensed non-profit placement agency as defined by G.L. c. 28A, § 9.^{18/} Nonrecurring adoption expenses include reasonable and necessary adoption fees, court costs, attorneys' fees and other costs directly related to the adoption, but do not include out-of-pocket expenses for which the family may be or has been reimbursed by other sources.^{19/}

Guardianship Subsidy

Following the finalization of a guardianship, guardians are provided with a guardianship subsidy to help reimburse the cost of caring for the child. If a child is placed under guardianship and the child does not receive support payments from any other state or federal agency, the child is eligible for continued support payments and/or medical assistance from DSS to the same extent as if the child had remained in foster care.^{20/} If the child is receiving support payments from any other state or federal agency, then the child is eligible for support payments and/or medical assistance from DSS only to the extent that it would raise the total support from all sources to the amount the child would be receiving if he had remained in foster care.^{21/} The guardianship subsidy ends when the child turns 18.

The guardian and DSS enter into an agreement entitled "Application/Agreement for Subsidized Guardianship" (Guardianship Subsidy Agreement).^{22/} The Guardianship Subsidy Agreement sets forth the amount that DSS will pay per day for the care of the child. The guardianship subsidy begins following the date of the allowance of the guardianship petition and/or termination of foster care payments.

DISCUSSION

Section 7 of G.L. c. 268A, the conflict of interest law, prohibits a state employee^{23/} from having, in addition to his state employee position, a "financial interest, directly or indirectly, in a contract made by a state agency, in which the [state] or a state agency is an interested party." In order to determine whether a state employee may participate in the various DSS programs, it is necessary to determine whether in doing so, they have a financial interest in a state contract for purposes of § 7.

A. The Contracts

The first issue to address is whether the various DSS Agreements such as the Foster Parent Agreement, Child-Specific Agreement, Adoption Subsidy Agreement and Guardianship Subsidy Agreement (hereinafter referred to collectively for convenience as the "DSS Agreements") constitute "contracts" for purposes of § 7. "A contract is simply a promise supported by consideration, which arises . . . when the terms of an offer are accepted by the party to whom it is extended."^{24/} The term includes any type of arrangement between two or more parties under which one party undertakes certain obligations in consideration of the promises made by the other party.^{25/}

The Commission, as well as the courts, "have given the term 'contract' a broad meaning to cover any arrangement in which goods or services are to be provided in exchange for something of value."^{26/} The elements of a contract are offer and acceptance, consideration and mutual assent to essential terms.^{27/} Consideration is "[t]he cause, motive, price, or impelling influence which induces a . . . party to enter into a contract."^{28/} The requirement of consideration is satisfied if there is either a benefit to the promisor or a detriment to the promisee.^{29/}

Based on these facts, we conclude that the DSS Agreements are contracts for purposes of § 7. There is an offer and acceptance. The element of consideration is also present as a result of the various payments made to foster/pre-adoptive parents in return for their agreement to take responsibility for the day-to-day care and supervision of children in the care or custody of DSS. Consideration is similarly present with the subsidies provided to adoptive parents and guardians for taking legal custody of children formerly in the care or custody of DSS.

Further, we do not consider the various DSS programs to be the type of government benefit programs that we have previously said do not constitute a contract. In the Commission's prior opinions that reviewed state benefit programs and discussed whether there was a contract for purposes of § 7, the Commission found that cash grant public assistance program benefits as then existing^{30/} that were administered by state or federal government agencies were not contracts.^{31/} The Commission relied on the fact that none of the program benefits at issue were supported by consideration and each was made available pursuant to statutorily defined criteria and eligibility guidelines.^{32/}

Thus, a recipient was not required to work or otherwise provide any bargained-for exchange in order to receive the benefit to which they were entitled. In that situation, there was no consideration and, therefore, no contract. Although the various DSS programs are similar in

one way to such programs because they involve statutorily defined eligibility guidelines in order to serve as a foster/adoptive parent, they are markedly different in that they require the individuals participating in the programs to assume various responsibilities on behalf of DSS in return for which they will receive various payments and ongoing support and training from DSS. In addition, adoptive parents and guardians agree to assume legal responsibility for children formerly in the care or custody of DSS. The DSS Agreements define various rights and duties of both parties. Moreover, the benefits available from DSS are not available simply to those who qualify, but rather only to those who qualify and who then actually provide services to a child currently or formerly in the care or custody of DSS.

B. Financial Interest

Having determined that the DSS Agreements are contracts for the purposes of § 7, we next consider whether the state employees who wish to participate in the various DSS programs will have a financial interest in those contracts.

Each foster/pre-adoptive parent, adoptive parent or guardian is entitled to receive various payments. These payments such as the daily rate, as well as the adoption and guardianship subsidies, are intended to cover the basic living expenses for the care of the child. DSS regulations also provide for a quarterly clothing allowance, a birthday supplement and a holiday allowance to foster/pre-adoptive parents for the purpose of purchasing clothing and gifts for the child. Some foster/pre-adoptive parents may also be entitled to receive additional payments for approved costs and expenses beyond those typically incurred in caring for a child through the Receiptable Reimbursement Program as well as an hourly rate for services provided under the P.A.C.T. Program.

Thus, every individual serving in one of the DSS programs has an obvious financial interest in receiving the various payments or subsidies from DSS. The financial interest includes those payments meant to reimburse parents for out-of-pocket expenses as well as P.A.C.T. payments made for specific services provided by the foster/pre-adoptive parent to the child.

There are other provisions in the DSS Agreements that establish a financial interest in a state contract even if a foster/pre-adoptive parent does not receive any P.A.C.T. payments. For example, § 29 of the Foster Parent Agreement requires foster/adoptive parents to maintain homeowner's insurance. In addition, § 15 provides that DSS will provide limited amounts of reimbursement secondary to other primary insurances (such as homeowner's insurance), for reimbursement on account of theft of or damage to the foster/adoptive family's property that is the result of deliberate, malicious action by a child in DSS care or custody. Each of these provisions establishes a financial interest in a contract with DSS.

Accordingly, state employees who participate in the DSS programs have a financial interest in a state contract. Therefore, a qualified state employee who wants to serve as a foster/pre-adoptive parent, adoptive parent or guardian must obtain an exemption under § 7.

C. Exemption Available to Full-Time State Employees and Those Who are Not Special State Employees

1. DSS Employees

All full-time DSS employees and part-time DSS employees whose positions do not qualify for special state employee^{33/} status, do not qualify for any exemptions under § 7. Thus, in order for them to participate in the various DSS programs and receive the corresponding payments, there must be an additional exemption created under § 7.

2. Non-DSS Employees

In general, full-time state employees who do not work for DSS or an agency that regulates the activities of DSS, are eligible for the § 7(b) exemption, provided that they satisfy all of the requirements of that exemption. This exemption is also available to part-time, non-DSS state employees whose positions do not qualify for special state employee status. In each instance, the state employee must be able to satisfy all of the following requirements of the § 7(b) exemption.

As a state employee, he must not participate^{34/} in or have official responsibility^{35/} for any of the activities of the contracting agency, DSS. The state employee may not be employed by DSS. In addition, the state agency for which the employee works must not regulate^{36/} the activities of DSS. The DSS program must be publicly advertised.^{37/} The state employee must file a written disclosure with the Commission describing his interest in the DSS program.

In addition, because a state employee serving as a foster/pre-adoptive parent, adoptive parent or guardian is providing personal services, he or she must comply with the following additional restrictions. The services for the DSS program must be provided outside of the individual's normal working hours as a state employee. The services may not be required as part of his regular state duties. The state employee may not be compensated^{38/} for his personal services in the DSS program for more than 500 hours during a calendar year. Finally, the head of the contracting agency, DSS, must make and file with the Commission a written certification that no current employee of DSS is available to perform the work as part of their regular duties.

A foster/pre-adoptive parent, adoptive parent or guardian's obligation is to provide care and supervision for the child twenty-four hours a day, seven days a week. The prohibition in the § 7(b) exemption, however, prohibits only the receipt of *compensation* for more than 500 hours during a calendar year. In other contexts, the Commission has previously stated that reimbursement for expenses is not considered compensation.^{39/} As such, receipt of the daily rate, quarterly clothing allowance, annual birthday and holiday supplements, extraordinary out-of-pocket expenses under the Receiptable Reimbursement Program and adoption and guardianship subsidies are not considered compensation for purposes of calculating the 500 hours under § 7(b).^{40/} In other words, if the state employee who is a foster/pre-adoptive parent, adoptive parent or guardian only receives the daily rate, other reimbursements or the adoption or guardianship subsidy, he is not receiving compensation in excess of 500 hours.

In contrast, payments made pursuant to an hourly rate through the P.A.C.T Program to a foster/pre-adoptive parent for providing additional services will be considered compensation for

purposes of § 7(b). Those payments do not reimburse a parent for out-of-pocket expenses. Rather, they compensate a parent for providing special services to the child.^{41/} As such, in order to use the § 7(b) exemption, the state employee may not receive such payments for more than 500 hours per year.

In summary, any full-time state employee or part-time employee whose position is not eligible for special state employee status (other than a DSS employee), who satisfies all of the requirements for a § 7(b) exemption, may participate in the DSS programs at the same time that he is holding his state job. However, if he fails to satisfy any of the requirements of that exemption, he may not participate.

For example, a full-time employee of the Department of Conservation and Recreation may serve as a foster parent using the § 7(b) exemption. In addition, a part-time clinician in the Department of Mental Health or a secretary at the Department of Revenue whose positions are not eligible for special state employee status, may participate using the § 7(b) exemption.

D. Exemptions Available to Certain Unpaid or Part-Time State Employees

In general, unpaid and part-time state employees whose positions qualify for special state employee status may use the § 7(d) or (e) exemption, depending on the state agency they work for.

A special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency, DSS, may use the § 7(d) exemption. Section 7(d) requires that the special state employee file with the Commission, a full disclosure of his interest in the contract.

Having filed a written disclosure of his financial interest with the Commission, the special state employee may then participate in the DSS program. For example, if an employee of the Department of Environmental Protection is a special state employee, she may serve as a foster/pre-adoptive parent by using the § 7(d) exemption because she does not participate in or have official responsibility for any DSS activities.

In contrast, a special state employee, including a DSS employee, who participates in or has official responsibility for any of the activities of DSS, must obtain a § 7(e) exemption. That exemption requires the special state employee to file a written disclosure of his interest in the DSS program with both the Commission and the Governor. In addition, the Governor must approve the exemption. If the special state employee does not obtain the Governor's approval, he may not participate in the DSS program. For example, a part-time employee at DSS who is a special state employee may serve as a foster/pre-adoptive parent only by using the § 7(e) exemption.

CONCLUSION

Our conclusion as to the application of § 7 to the various DSS programs will permit the majority of state employees to serve as foster/pre-adoptive parents, adoptive parents or guardians in compliance with the conflict of interest law. However, we recognize that this opinion will give rise to concerns for certain state employees who now serve or who wish to serve in the DSS programs, including full-time DSS employees,^{42/} who will not be eligible for an exemption under §7. We further recognize the importance of having a sufficient number of

trained and licensed individuals available to care for the almost 10,000 children who are in the care and custody of DSS on a daily basis and the obvious hardship to a foster child currently being cared for by such ineligible employees. Accordingly, the Commission, in accordance with its power to prescribe and publish regulations providing for reasonable exemptions from the conflict of interest law,^{43/} has directed its staff to work on developing a regulation that would allow DSS employees for whom no statutory exemption applies, to serve as foster/pre-adoptive parents, adoptive parents and guardians and to receive the applicable payments for such service.

DATE AUTHORIZED: January 12, 2006

^{1/} The Commission acknowledges the assistance of DSS in providing information about its various programs which are the subject of this opinion.

^{2/} 110 CMR 7.106(1).

^{3/} *Id.* at 7.103, Comment; *Id.* at 7.104, 7.105 & 7.108.

^{4/} *Id.* at 7.103(6).

^{5/} *Id.* at 7.111.

^{6/} *Id.* The term "adoptive parent" in the Foster Parent Agreement refers to a person with whom DSS has placed a child(ren) for adoption, but legalization of the adoption has not yet occurred.

^{7/} 110 CMR 7.112(2)(g).

^{8/} *Id.* at 7.130.

^{9/} *Id.* at 7.130(1).

^{10/} *Id.* at 7.130(2).

^{11/} *Id.* at 7.130(4).

^{12/} *Id.* at 7.130(3).

^{13/} *Id.* at 7.209(1).

^{14/} *Id.*

^{15/} *Id.*

^{16/} *Id.*

^{17/} Until the adoption is legalized, the foster home is paid at the DSS foster home rate.

^{18/} 110 CMR 7.209A.

^{19/} *Id.*

^{20/} *Id.* at 7.303(1).

^{21/} *Id.* at 7.303(2).

^{22/} We note that at the time this opinion was prepared, DSS was in the process of reviewing and revising the Guardianship Subsidy Agreement as well as its policies on the guardianship and adoption subsidies.

^{23/} State employee is defined as "a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council." G.L. c. 268A, § 1(q).

^{24/} 17 C.J.S. *Contracts* § 2 (1999 & 2005 Supp.) (footnote omitted). See *Restatement (Second) of Contracts* § 1 (1981) ("A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.").

^{25/} EC-COI-95-07.

^{26/} EC-COI-92-35; *Quinn v. State Ethics Commission*, 401 Mass. 210, 215-16 (1987). See EC-COI-89-14 (agreement need not be formalized in writing to be a contract for G.L. c. 268A, § 7 purposes); EC-COI-81-64 (state grant is a contract).

^{27/} 17 C.J.S. *Contracts* § 2 (1999 & 2005 Supp.).

^{28/} *Black's Law Dictionary* 306 (6th ed. 1990).

^{29/} *Marine Contractors Co., Inc. v. Hurley*, 365 Mass. 280, 286 (1974); *Fall River Housing Joint Tenants Council, Inc. v. Fall River Housing Authority*, 15 Mass. App. 992, 993 (1983).

^{30/} EC-COI-92-35 (Aid to Families with Dependent Children; Emergency Aid to the Elderly, Disabled and Children; Supplemental Security Income).

^{31/} *Id.* Compare EC-COI-96-4 (Section 8 Program rent subsidies and Massachusetts Rental Voucher Programs are contracts for purposes of § 7).

^{32/} EC-COI-92-35.

^{33/} Special state employee is defined as " a state employee: (1) who is performing services or holding an office, position, employment or membership for which no compensation is provided, or (2) who is not an elected official and (a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the [Commission] prior to the commencement of any personal or private employment, or (b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation." G.L. c. 268A, § 1(o).

^{34/} Participate is defined as "participate in agency action or in a particular matter personally and substantially as a state . . . employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise." G.L. c. 268A, § 1(j).

^{35/} Official responsibility is defined as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action." G.L. c. 268A, § 1(i).

^{36/} See *EC-COI-03-2* (discussing meaning of term regulate).

^{37/} The § 7(b) requirement that the contract be made after public notice may be satisfied by advertisement in a newspaper of general circulation or multiple public postings, including on the DSS website. See *EC-COI-95-07*; 87-24.

^{38/} Compensation is defined as “any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.” G.L. c. 268A, § 1(a).

^{39/} The Commission has frequently said the reimbursement for expenses is not compensation for purposes of §§ 4, 11 or 17, all of which prohibit a public employee from receiving compensation from anyone other than their public employer in connection with a particular matter in which their public employer is a party or has a direct and substantial interest. See *EC-COI-85-2*; 85-47; 84-81; 82-131; 81-142; 81-181. In the case of a state employee who received reimbursement for his lodging at a condominium owned by another state employee, the Commission stated that this was not a financial interest in a state contract for purposes of § 7 for either the lodging state employee or the owner state employee because the lodging reimbursement was analogous to other benefits which accrue to state employees by virtue of their employment status as part of their primary employment contract. *EC-COI-84-27*. In contrast, a reimbursement made to a state employee serving in a DSS program would not be part of his primary state employment contract.

^{40/} This conclusion is consistent with the federal and state tax codes which exclude such payments from a taxpayer’s gross income. See 26 U.S.C. § 131(a) (gross income does not include amounts received by foster care provider as qualified foster care payments); *Id.*, § 131(b) (qualified foster care payments include those made pursuant to a state’s foster care program which are paid by state to foster care provider for caring for qualified foster individual in foster care provider’s home); G.L. c. 62, § 2(a) (gross income defined as federal gross income).

^{41/} This interpretation is consistent with the definition of compensation in § 1(a) of G.L. c. 268A even if P.A.C.T. payments are not considered income for state and federal income tax purposes.

^{42/} In its regulations, DSS states that it “shall . . . support its own employees who wish to become foster or pre-adoptive parents by providing opportunities for them to do so.” 110 CMR 7.106(1).

^{43/} G.L. c. 268B, § 3(a)(2).